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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

NO. 175

PETSONELLA MORAGNE, as personal representative of the Estate of EDWARD MORAGNE, SR., deceased, and PETSONELLA MORAGNE, individually,

Petitioner,

vs.

STATES MARINE LINES, INC., a corporation

Respondent,

vs.

GULF FLORIDA TERMINAL COMPANY, a corporation,

Respondent.

PETITIONER'S BRIEF ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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A.

OPINIONS BELOW

The petitioner herein, PETSONELLA MORAGNE, seeks a review of the judgment and decision of the United States Court of Appeals for the Fifth Circuit in the case of *Moragne v. States Marine Lines, Inc.*, (5th Cir. 1969) 409 F. 2d 32, (A.55), which affirmed an Order of the United States District Court for the Middle District of Florida, striking from the plaintiff's complaint a count which alleged a cause of action based on unseaworthiness (A.13). The Court of Appeals for the Fifth Circuit adopted an opinion and decision of the Florida Supreme Court (A.27) answering a certified question (A.22) submitted to it by the Court of Appeals in *Moragne v. States Marine Lines, Inc.*, (Fla. 1968) 211 So. 2d 161, (A.27).

B.

GROUNDS UPON WHICH JURISDICTION OF THIS COURT IS INVOKED

The judgment of the United States Court of Appeals for the Fifth Circuit was dated and entered April 1, 1969 (A.57). Jurisdiction is invoked pursuant to 28 U.S.C. § 1254 (1); 28 U.S.C. § 2101 (c). The petitioner seeks review, by way of certiorari, of the decision and judgment of the United States Court of Appeals for the Fifth Circuit holding that the Florida Wrongful Death Act does not encompass an action for the wrongful death of a longshoreman caused by the unseaworthiness of a vessel on navigable waters of the United States within the territorial jurisdiction of Florida. The Court of Appeals' decision is based upon the answer to a certified question given by the Florida Supreme Court (A.27). The Court of Appeals adopted Florida law.

The Court of Appeals made it clear in its decision that it felt bound by *Tungus v. Skovgaard*, (1959) 358 U.S. 588, 79 S. Ct. 503, 3 L. Ed. 2d 524, and construed the decision in that case to require the Court of Appeals to look to Florida substantive law in reaching its decision.

The petitioner herein contends that the present status of the holding of this Court in *Tungus v. Skovgaard, supra,* is confusing and equivocal. For a prime example of this confusion see *Hornsby v. Fishmeal Co.*, (DC WD La. 1968) 285 F. Supp. 990, 993. Also see *Igneri v. Cie de Transports Oceanigues*, (2d Cir. 1963) 323 F. 2d 257, *cert. denied* 376 U.S. 949, 84 S. Ct. 965, 11 L. Ed. 2d 969 (1964); *Alcoa Steamship Co. v. Charles Ferran & Co.*, (5th Cir. 1967) 383 F. 2d 46, *cert. denied* 393 U.S. 836, 89 S. Ct. 111, 21 L. Ed. 2d 107 (1968); *Kenney v. Trinidad Corp.*, (5th Cir. 1965) 349 F. 2d 832, *cert. denied* 382 U.S. 1030, 86 S. Ct. 652, 15 L. Ed. 2d 542 (1966); and *United New York and Sandy Hook Pilots Assn. v. Rodermond Industries, Inc.*, (3rd Cir. 1968) 394 F. 2d 65. In *Tungus*, the majority of the Supreme Court originally, in a 5-4 decision, clearly held that the state's substantive law would apply in an action brought under the state's wrongful death act. Since the original opinion in *Tungus v. Skovgaard, supra,* three of the five Justices who constituted the majority of the Supreme Court have either receded from or qualified their reasoning in that case. The Court of Appeals, nevertheless, felt bound by the original opinion.

Since the decision in *Tungus v. Skovgaard, supra,* the overwhelming majority of the courts that have considered the question, i.e. whether a cause of action may be maintained based upon unseaworthiness under the various state statutes, have concluded that such State Wrongful Death Statutes do incorporate a cause of action for unseaworthiness and do in-

corporate federal admiralty law. Thus, the holding of the Court of Appeals defining the application of substantive law under the Florida Wrongful Death Act is in conflict with many decisions of other circuit courts construing the death acts of other states.

Additionally, petitioner contends that the construction given to the Florida Wrongful Death Act by the Court of Appeals for the Fifth Circuit and the Florida Supreme Court contravenes Article III, Section 2 of the Constitution of the United States, and contravenes Article VI of the Constitution of the United States.

C.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

1) Florida Statutes, 768.01—Right of action for death —(1) Whenever the death of any person in this state shall be caused by the wrongful act, negligence, carelessness or default of any individual or individuals, or by the wrongful act, negligence, carelessness or default of any corporation, or by the wrongful act, negligence, carelessness, or default, of any agent of any corporation, acting in his capacity of agent of such corporation *(or by the wrongful act, negligence, carelessness or default of any ship, vessel or boat or persons employed thereon)*, and the act, negligence, carelessness or default, is such as would, if the death had not ensued, have entitled the party injured thereby to maintain an action *(or to proceed in rem against the said ship, vessel or boat, or in personam against the owners thereof, or those having control of her)* and to recover damages in respect thereof, then and in every such case the person or persons who, or the corporation *(or the ship, vessel or boat)*, which would have been liable in damages if

death had not ensued shall be liable to an action for damages *(or if a ship, vessel or boat, to a libel in rem, and her owners or those responsible for her wrongful act, negligence, carelessness or default, to a libel in personam)*, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to a felony. (2) The right of action as set forth in subsection (1) above shall extend to and include actions ex contractu and ex delicto. (Emphasis added.)

II) Constitution of the United States, Article III, Section 2:

> The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States and treaties made, or which shall be made, under their authority . . . to all cases of admiralty and maritime jurisdiction.

III) Constitution of the United States, Article VI:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

D.

QUESTIONS PRESENTED FOR REVIEW

The primary questions presented are:

I) Does Article III, Section 2 of the Constitution of the United States require the uniform application of substantive

admiralty law to actions for wrongful death brought under State Wrongful Death Acts arising out of maritime torts committed on navigable waters of the United States within the territorial jurisdiction of the states?

II) Does the uniformity of admiralty and maritime law as contemplated by Article III, Section 2 of the Constitution of the United States and federally developed maritime principles, in cases arising out of deaths occurring on navigable waters of the United States, prohibit the application of substantive state common law principles which are in conflict with substantive admiralty law?

III) Does the application of substantive state common law principles, which are in conflict with substantive federal admiralty principles, in determining the rights and liabilities of a longshoreman, killed upon navigable waters of the United States within the territorial jurisdiction of the State of Florida, contravene the provisions of Article VI of the Constitution of the United States?

IV) Should the Supreme Court overrule *The Harrisburg*, 119 U. S. 199?

E.

STATEMENT OF THE CASE

On December 31, 1964, Edward Moragne, Sr., a longshoreman, in Tampa, Florida, was killed while working on board the PALMETTO STATE, a vessel owned by the respondent States Marine Lines, Inc., when a hatch beam over hatch No. 4 on the vessel became disengaged from its position, allegedly because of a defective locking arrangement, and fell into the No. 4 hold striking the deceased in the head killing him almost instantly.

Subsequently, his widow the petitioner, Petsonella Moragne, for herself and her two minor children, and as personal representative of the Estate of Edward Moragne, Sr., brought an action against the vessel owner, States Marine Lines, Inc., pursuant to the Florida Wrongful Death Act, 768.01 (A.1). The defendant, States Marine Lines, Inc., removed the action to the United States District Court for the Middle District of Florida on the Basis of diversity jurisdiction (A.6). A motion to remand the action to the State Court was subsequently denied. Petitioner, in Count II of her complanit (A.4), alleged a cause of action based upon the unseaworthiness of the vessel PALMETO STATE.

Upon motion of the shipowner, States Marine Lines, Inc., to dismiss Count II of the complaint based upon unseaworthiness (A.12), the District Court dismissed the Count from the complaint but in the court's order (A.13) stated that there was involved "a controlling question of law as to which there is a substantial ground for difference of opinion, and that an immediate appeal from this order may materially advance the ultimate determination of this litigation." (A.14).

Petitioner requested leave of the United States Court of Appeals for the Fifth Circuit to take an interlocutory appeal pursuant to 28 U.S.C. §1292. Such leave was granted by the Court of Appeals on October 28, 1966 (A.15). The respondent herein then requested the Court of Appeals to certify the question of law involved to the Florida Supreme Court (A.17) and over petitioner's objection (A.19) the Court of Appeals did on August 11, 1967, forward its certificate to the Florida Supreme Court (A.22). In the certificate transmitted to the Florida Supreme Court by the Court of Appeals for the Fifth Circuit, the question of law to be answered was stated as follows:

"Does the Florida Death by Wrongful Act Statute

give rise to a cause of action under principles of the maritime law of unseaworthiness for the wrongful death of longshoremen caused by the unseaworthiness of a vessel on the navigable waters of the State of Florida?"

The Florida Supreme Court, by its decision, answered this question in the negative on May 29, 1968. Rehearing was denied by the Florida Supreme Court on July 3, 1968 (A.44).

Petitioner then filed an extraordinary motion in the United States Court of Appeals for the Fifth Circuit asking the Court of Appeals to hold that the Florida Death by Wrongful Act statute did incorporate an action for unseaworthiness by virtue of federal maritime principles and to hold that the Florida Supreme Court was correct in deciding that the Florida Death by Wrongful Act statute did provide a remedy for death occurring upon navigable waters of the United States within the territorial jurisdiction of Florida but that the Florida Supreme Court was incorrect in holding that the substantive common law principles of Florida followed such remedy and were paramount and superceded the federal maritime law regarding the substantive rights and liabilities of the parties (A.45).

The Court of Appeals for the Fifth Circuit heard oral argument on this extraordinary motion on October 28, 1968, and accepted supplemental briefs addressed to the constitutional issues involved (A.45).

On April 1, 1969, the Court of Appeals for the Fifth Circuit affirmed the decision of the District Court striking the unseaworthiness count from plaintiff's complaint and said:

"No useful purpose will be served by additional review of pertinent authority on the issue of law pre-

sented in this appeal. It is sufficient to state that in *Tungus v. Skovgaard,* (1959) 358 U.S. 588, 79 S. Ct. 503, 3 L. ed. 2d 524, the United States Supreme Court held that the question whether a State Wrongful Death Act encompasses a cause of action of unseaworthiness is a question to be decided by the courts of that state." (A.56).

The United States Supreme Court granted the Petition for Writ of Certiorari to the Court of Appeals for the Fifth Circuit on November 10, 1969. (Note: The Florida Supreme Court likewise held contributory negligence to be a complete bar to recovery for wrongful death occurring upon navigable waters located within the State of Florida. Bilbrey v. Weed, (1968) 215 So. 2d 479, cert. den. 394 U.S. 1018, 89 S. Ct. 2097, 23 L. Ed. 2d 43, reh. den. June 16, 1969.

F.

SUMMARY OF ARGUMENT

The decision and judgment of the United States Court of Appeals for the Fifth Circuit in this case contravenes Article III, Section 2 and Article VI of the Constitution of the United States in that the Court of Appeals, in deciding this case, relied upon the majority opinion of this Court in *M/V Tungus v. Skovgaard,* 358 U.S. 588, 79 S. Ct. 503, 3 L. Ed. 2d 524, and allowed the Supreme Court of Florida to decide the substantive law applicable to maritime deaths occurring on navigable waters of the United States within the territorial limits of the State of Florida. The Supreme Court of Florida held that under the Florida Wrongful Death Act the warranty of seaworthiness did not apply to such a maritime death. The majority opinion of this Court in *Tungus* was wrong and the Supreme Court should recede from that opinion. Three Justices of the five-member majority have

since substantially qualified the majority holding in *Tungus* and there presently exists confusion among the lower courts as to the present meaning of *Tungus*.

The death statutes of all the major maritime states which have been construed since the court's decision in *Tungus* have been held to incorporate substantive admiralty law, except Florida in the instant case.

The instant decision violates the uniformity of maritime law required by the Constitution and the interpretation of the Constitution by the Supreme Court in prior cases.

Florida stands alone among the major maritime states in denying to the widow and children of a deceased longshoreman killed upon navigable waters of the United States the benefit of the maritime doctrine of unseaworthiness and comparative negligence.

The Constitution forbids the delegation of power to the states to formulate admiralty substantive law which conflicts with existing maritime law as decided by the Supreme Court or by Congress.

The Supreme Court requested the parties to brief the question of whether *The Harrisburg*, 119 U.S. 199, should be overruled. Petitioner contends that whether or not the Court overrules *The Harrisburg*, the Court should recede from the majority opinion in *Tungus* and should reverse the instant case and remand the case to the Court of Appeals for the Fifth Circuit with instructions to decide the case upon established principles of maritime tort law.

The decision of the Supreme Court in *The Harrisburg* was wrong in that the Court engrafted into maritime law a thoroughly discredited doctrine of the common law, i.e., there

is no right of action for wrongful death, and in so doing abandoned traditional principles of the maritime law of the United States which looked to the civil law rather than the common law for guidance.

The decision in *The Harrisburg* established a precedent for the development of nonuniformity in the area of wrongful death by requiring the courts to look to state statutes in order to find a remedy for wrongful death. The body of law that has developed since *The Harrisburg* and largely since *Tungus* is conflicting and confusing.

Admiralty has traditionally found or created remedies where necessary to accomplish equity and justice as, for instance, in impleader, unseaworthiness and comparative negligence.

The Supreme Court should overrule the long-standing rule of *The Harirsburg* since it is clearly wrong, as the Court has done in previous cases regarding other matters.

There are some practical considerations to overruling *The Harrisburg* which petitioner seeks to call to the Court's attention.

Petitioner concludes that the Supreme Court should recede from the majority opinion in *M/V Tungus v. Skovgaard* and should reverse the instant case and hold that established principles of maritime tort law govern all maritime tort cases whether the result is injury or death and that the states have no paramount right to substitute conflicting state law for established maritime principles. Petitioner further concludes that it is not necessary for the Court to overrule *The Harrisburg* in order to reverse this case. However, petitioner further concludes that *The Harrisburg* was wrong and should be reversed

and the Court should declare that there is a remedy rooted in the maritime law for wrongful death of persons killed as a result of maritime torts.

G.

ARGUMENT

I.

THE M/V TUNGUS V. SKOVGAARD WAS WRONG

The decision and judgment of the United States Court of Appeals for the Fifth Circuit contravenes and violates Article III, Section 2 of the Constitution of the United States. It decides an important issue in a manner which in all probability is not in accordance with the law as this Court would now pronounce it. It applies Florida substantive common law tort principles to a case of death occurring upon navigable waters of the United States within the territorial jurisdiction of the State of Florida. The petitioner contends that the State of Florida may not, either by its courts or legislature, provide the system of law which prevails and determines the rights, obligations and liabilities of the parties in a case involving a maritime death occurring upon navigable waters of the United States except to the extent that it provides a remedy in addition to other remedies provided by admiralty or federal law for the enforcement of duties rooted in admiralty law.

In this case, the Court of Appeals, adopting the decision of the Florida Supreme Court, has extinguished the doctrine of unseaworthiness in cases of death occurring upon navigable waters of the United States within the territorial jurisdiction of Florida.

If the Florida Supreme Court or the Florida Legislature can constitutionally provide the substantive law applicable to marine deaths, then such state law becomes paramount and takes the place of admiralty substantive law in contravention of Article VI of the Constitution of the United States.

The Court of Appeals failed to distinguish between the *remedy* for an action based upon wrongful death provided by the Florida Statute (which does not conflict with existing admiralty remedies) and the *substantive law* applicable to torts occurring upon navigable waters of the United States. Here the Court of Appeals delegated to the Florida Supreme Court the authority to determine by what substantive law principles deaths occurring on navigable waters of the State of Florida would be defined and governed.

In so doing, the Court of Appeals stated that it felt constrained to follow the majority opinion of the Supreme Court in *M/V Tungus v. Skovgaard*, (1959) 358 U.S. 588, 79 S. Ct. 503, 3 L. ed. 2d 524.

For an illuminating discussion of the Florida death statute, vis a vis maritime law, see the dissent of Circuit Judge John R. Brown in *Emerson v. Holloway Concrete Products*, (5th Cir. 1960) 282 F. 2d 271, at page 278.

In *Tungus*, the Chief Justice and Justices Black, Douglas and Brennan felt that admiralty law must be applied uniformly and that the State Wrongful Death Statutes must be restricted to furnishing a remedy for wrongful death; that the states had no right to furnish substantive law conflicting with established admiralty law.

Of the Justices in the majority in *Tungus*, Justice Whitaker apparently receded from the majority opinion in *Tungus*

in *Goett v. Union Carbide Corp.* (1960) 361 U.S. 340, 80 S. Ct. 357, 4 L. ed. 2d 341, when he said:

> "The court's opinion says that *The Tungus v. Skovgaard,* (1959) 358 U.S. 588, 79 S. Ct. 503, 3 L. ed. 2d 524, 'decided that it was a question of State law as to what is the proper substantive law to be applied to maritime torts within the territorial jurisdiction of the States in wrongful death cases [and that] [u]nder this holding in a maritime tort death case the State might apply the substantive law generally applicable to wrongful death cases within its territory, or it might choose to incorporate the general maritime law's concepts of unseaworthiness or negligence.' *I do not understand the Tungus case to so hold, and if such a holding was intended by its author or by any of the Justices who joined it, it does not say so.*
>
> * * *
>
> And when, in a case encompassed by the terms of the State's Wrongful Death Statute, admiralty 'adopts' such statute, it does so only to afford a remedy for a substantive cause of action created by the maritime law which 'if death had not insued' would have redressed it." (emphasis supplied) (pages 345-346).

In *Hess v. U. S.,* (1960) 361 U.S. 314, 80 S. Ct. 341, 4 L. ed. 2d 305, Justices Harlan and Frankfurter, who joined in the original majority opinion in *Tungus,* apparently qualified their holding in *Tungus:*

> "The Court, if I read its opinion right, holds that when a victim of a maritime tort dies as a result of such conduct, the law of the State whose wrongful

death statute is invoked wholly governs liability. At the same time the Court leaves open the question whether a state wrongful death act might contain 'provisions so offensive to traditional principles of maritime law that the admiralty would decline to enforce them,' finding that this Oregon statute 'presents no such problem.'

I cannot agree with the view that wrongful death actions growing out of maritime torts are so pervasively controlled by state law, or with the conclusion that this state statute in its substantive provisions is, in any event, not offensive to maritime law." (p. 322-323).

In both *Goett* and *Hess* the Chief Justice and Justices Black, Douglas and Brennan, joined with the authors of those decisions solely under compulsion of the majority holding in *Tungus* and expressed their continuing disagreement with the ruling in *Tungus*.

In view of the qualifications placed upon the decision in *Tungus* by three of the Justices, constituting the original majority, it is now difficult to tell what *Tungus* actually stands for. Compare *Tungus* with the Court's language in *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 74 S. Ct. 202, 98 L. ed. 143, where this court said:

"His right of recovery for unseaworthiness and negligence is rooted in federal maritime law. Even if Hawn were seeking to enforce a State-created remedy for his right, federal maritime law would be controlling. While States may sometimes supplement federal maritime policies, a State may not deprive a person of any substantial admiralty rights as defined in controlling acts of Congress or by interpretative decisions of this Court."

The Court of Appeals for the Fifth Circuit, after spending considerable time, hearing oral argument and accepting supplemental briefs, concluded that it was bound by the original majority opinion in *Tungus* to accord to the State of Florida the right to decide what substantive law would apply to actions for death occurring upon navigable waters of the United States within the territorial jurisdiction of the State of Florida.

Since the Court's decision in *Tungus*, the overwhelming majority of the courts which have considered the Wrongful Death Statutes of the various states have concluded that these statutes, dissimilar as they may be, in each instance incorporate admiralty substantive law.

It was only when the Florida Supreme Court handed down its opinion in the instant case that the fears of the Chief Justice and Justices Black, Douglas and Brennan, expressed in *Tungus*, came to fruition.

II.

THE LAW SINCE TUNGUS

Since this Court's decision in *Tungus*, the following courts have construed death acts of the various states to incorporate admiralty substantive law:

CALIFORNIA

Curry v. Fred Olsen Lines, 367 F. 2d 921 (9th Cir. 1966) cert. den. 386 U.S. 971, 87 S. Ct. 1165, 18 L. Ed. 2d 131 (1967)

LOUISIANA

Grigsby v. Coastal Marine Service, 235 F. Supp. 97 (WD La. 1964) affirm'd. in part, 412 F. 2d 1011, (5th Cir. 1969)

MARYLAND

Maryland ex rel Smith v. A/S Nabella, 176 F. Supp. 668 (DC Md. 1959)

Maryland ex rel Gladden v. Weyerhauser S.S. Co., 176 F. Supp. 664, (DC Md. 1959)

Metzger v. S. S. Kirsten Torm, 245 F. Supp. 227 (DC Md. 1965)

MICHIGAN

Hunter v. Dampsk A/S Flint, (DC ED Mich. 1967) 279 F. Supp. 701

NEW JERSEY

United New York & New Jersey Sandy Hook Pilots Association v. Halecki, 358 U.S. 613, 79 S. Ct. 517, 3 L. ed. 2d 541 (1959)

Petition of Marina Mercante Nicaraguense, S.D., 248 F. Supp. 15 (SD NY 1965); 364 F. 2d 118 (1966); cert. den. 385 U.S. 1005, 87 S. Ct. 710, 17 L. Ed. 2d 544; reh. den. 386 U.S. 929, 87 S. Ct. 851, 17 L. Ed. 2d 803 (1967)

NEW YORK

Cunningham v. Rederiet Vindeggen, A/S, 333 F. 2d 308 (2d Cir. 1964)

Clark v. Iceland S.S. Co., 6 A.D. 2d 544, 179 N.Y.S. 2d 708, (1st Dept. 1958)

Olsen v. New York Central Railroad Co., 341 F. 2d 233 (2d Cir. 1965)

OREGON

Hess v. United States, 361 U.S. 314, 80 S. Ct. 341, 4 L. Ed. 2d 305 (1960)

Tallmon v. Toko Kaium K. K. Kobe, (DC Ore. 1967) 278 F. Supp. 452

PUERTO RICO

Compania Transatlantica Espanola, S. A. v. Melendez Torres, 358 F. 2d 209, (1st Cir. 1966)

SOUTH CAROLINA

Anthony, Adm. v. International Paper Co., 289 F. 2d. 574, (4th Cir. 1961)

TEXAS

Vassallo v. Nederl-Amerik Stoomv Maats Holland, 344 S.W. 2d 421, (Tex. 1961)

VIRGINIA

Holley v. The Manfred Stansfield, 269 F. 2d 317 (4th Cir. 1959); cert. den. 361 U.S. 883, 80 S. Ct. 154, 4 L. Ed. 2d 119 (1961)

Union Carbide Corp. v. Goett, 278 F. 2d 319 (4th Cir. 1960), cert. den. 364 U.S. 826, 81 S. Ct. 64, 5 Law Ed. 2d 55

It is indicated that Massachusetts would follow the same principle. *O'Leary v. United States Lines*, 215 F. 2d 708 (1st Cir. 1954); cert. den. 348 U.S. 939, 75 S. Ct. 360, 99 L. Ed. 735 (1955); and *Turner v. Wilson Line of Mass.*, 242 F. 2d 414 (1st Cir. 1957).

The verbatim Statutes are set forth in Appendix "C" to the Petition for Writ of Certiorari in this cause.

Under the Death on the High Seas Act, 46 U.S.C.A. § 761, the federal courts have held that a right of action for unseaworthiness is incorporated within the terms of that act. *Montgomery v. Goodyear Tire and Rubber Co.*, 241 F. Supp. 447 (DC NY 1964); affmd. 392 F. 2d 777 (2d Cir. 1968); cert. den. 393 U.S. 841, 89 S. Ct. 121, 21 L. Ed. 2d 112 (1968); and *Chermesino v. Vessel Judith Lee Rose*, 211 F. Supp. 36 (DC Mass. 1962), affm'd. 317 F. 2d 927, (1st Cir. 1963), cert. den. 375 U.S. 931, 84 S. Ct. 333, 11 L. Ed. 2d 264 (1963).

Thus, Florida stands alone among the major maritime states in denying to the widow and children of a deceased longshoreman the benefit of the maritime doctrine of unseaworthiness and the benefit of the maritime doctrine of comparative negligence.

III.

THE MORAGNE DECISION VIOLATES UNIFORMITY

Uniformity of maritime law forbids such a result. In

Knickerbocker Ice Company v. Stewart, (1920) 253 U.S. 149, 40 S. Ct. 438, 64 L. Ed. 834, the United States Supreme Court declared unconstitutional an attempt by the Congress to extend the operation of state workmen's compensation statutes to injuries and death occurring on navigable waters within territorial limits of the states and said:

> "The Constitution itself adopted and established, as part of the laws of the United States, approved rules of the general maritime law and empowered Congress to legislate in respect of them and other matters within the admiralty and maritime jurisdiction. Moreover, it took from the states all power, by legislation or judicial decision, to contravene the essential purposes of, or to work material injury to, characteristic features of such law to interfere with its proper harmony and uniformity in its international and interstate relations.
>
> To preserve adequate harmony and appropriate uniform rules relating to maritime matters and bring them within control of the federal government was the fundamental purpose; and to such definite end Congress was empowered to legislate within that sphere.
>
> Since the beginning federal courts have recognized and applied the rules and principles of maritime law as something distinct from laws of the several states — not derived from or dependent on their will. The foundation of the right to do this, the purpose for which it was granted, and the nature of the system so administered, were distinctly pointed out long ago:

'That we have a maritime law of our own, operative throughout the United States, cannot be doubted.

* * * One thing, however is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several states, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the states with each other or with foreign states.' *The Lottawanna*, 21 Wall. 558, 574, 575 (22 L. Ed. 654). (p. 160-161). * * *

Obviously, if every state may freely declare the rights and liabilities incident to maritime employment, there will at once arise the confusion and uncertainty which framers of the Constitution both foresaw and undertook to prevent." (p. 166).

The decision in *Knickerbocker Ice Co. v. Stewart*, supra, followed the Supreme Court decision in *Southern Pacific Company v. Jensen* (1917), 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086, holding that the New York Workmen's Compensation Statute could not be validly or constitutionally applied to compensate for the death of a longshoreman killed on navigable waters in the State of New York. Subsequent to *Knickerbocker Ice Co. v. Stewart*, supra, the Congress again attempted to extend the State workmen's compensation laws to cover injuries or death of maritime workers occurring on navigable waters within the territorial limits of the States, but excluding masters and members of the crew of vessels. Again the Supreme Court,

following *Knickerbocker Ice Co. v. Stewart*, supra, declared unconstitutional this Congressional enactment. *Washington v. W. C. Dawson & Co.* (1924) 264 U.S. 219, 44 S. Ct. 302, 68 L. Ed. 646.

In *Red Cross Line v. Atlantic Fruit Company*, (1924) 264 U.S. 109, 44 S. Ct. 274, 68 L. Ed. 582, the Supreme Court held that the State of New York had the authority to confer a remedy for the enforcement of arbitration contained in a maritime contract and distinguished between remedies, which States have the right to furnish, and the substantive law which the States do not have the authority to tamper with.

In this case the Supreme Court said:

> "The 'right of a common law remedy,' so saved to suitors, does not, as has been held in cases which presently will be mentioned, include attempted changes by the states in the substantive admiralty law, but it does include all means other than proceedings in admiralty which may be employed to enforce the right or to redress the injury involved. It includes remedies in pais, as well as proceedings in court; judicial remedies conferred by statute, as well as those existing at the common law; remedies in equity, as well as those enforceable in a court of law. (p. 123-124) * * *
>
> This state statute is wholly unlike those which have recently been held invalid by this court. The Arbitration Law deals merely with the remedy in the state courts in respect of obligations voluntarily and lawfully incurred. It does not attempt to either modify the substantive maritime law or to deal with the remedy in courts of admiralty." (p. 124).

The instant decision, which is contrary to all recent holdings by other courts, appears to arise over a confusion between remedies and substantive principles.

There is no question that the Florida Wrongful Death Act provides a remedy for wrongful deaths occurring upon navigable waters of the United States within the territorial jurisdiction of the State of Florida. It is also established law that this remedy carries with it all the burdens and limitations placed upon the remedy by the state.

The question is, whether or not the state may provide substantive law which conflicts with federal admiralty law to determine the rights and liabilities of the parties for whom the remedy is provided.

The remedy itself does not conflict with any principles of admiralty law. The Congress has not seen fit to legislate in this field or to provide a remedy for wrongful death within the states' territorial waters.

The substantive law governing torts occurring on navigable waters of the United States, however, is fixed and defined by federal law. Here the Court of Appeals has adopted state law which is in violent and direct conflict with the federal substantive law applicable to maritime torts.

If by legislation or court decision Florida may provide a remedy for disputes arising upon Florida's navigable waters where there is no existing remedy under federal law and then may provide the substantive law to go with the remedy where substantive law conflicts with federal law, then such state law becomes paramount to the federal maritime law and contravenes Article III, Section 2 and Article VI of the Constitution of the United States.

This is a result which the framers of the Constitution could not have intended. Clearly, federal law must remain paramount in the settling of disputes arising on navigable waters of the United States.

If the substantive law promulgated by the various states is applied to maritime disputes and is paramount to federal law, then the power of the United States in the maritime field is substantially damaged and one of the basic purposes of the original union of the states has been effectively demolished.

IV.

THE RULE OF THE HARRISBURG

In *The Harrisburg*, (1886) 119 U.S. 199, 7 S. Ct. 140, 30 L. Ed. 358, the Supreme Court held: (1) that no remedy for wrongful death existed in the general maritime law as applied in the United States absent an applicable statute, and (2) that the courts would look to applicable state statutes to find a remedy for wrongful death and as a condition to the application of such state statutes would apply the state time limitation to such an action rather than the admiralty doctrine of laches.

The court, however, toward the end of the opinion, stated:

> "No question arises in this case as to the power of a court of admiralty to allow an equitable excuse for delay in suing, because no excuse of any kind has been shown."

The rule established in *The Harrisburg*, i.e. that there is no remedy for wrongful death under maritime law, is re-

sponsible for the passage of the Death on the High Seas Act, 46 U.S.C. 761, and the Jones Act, 46 U.S.C. 688, and a large mass of confusing decisions culminating in *M. V. Tungus v. Skovgaard*, *supra*, and the cases attempting to construe that opinion.

The petitioner herein, while believing that *The Harrisburg* was wrongly decided and should be overruled, nevertheless strongly urges that the Supreme Court should recede from the majority opinion in *Tungus* and reverse the Court of Appeals' opinion and judgment in *Moragne*, whether or not the Court decides to overrule *The Harrisburg*, for the following reasons:

1. *The Harrisburg* does not purport to grant to the states authority to formulate admiralty substantive law in conflict with federal maritime law and is, therefore, not authority for the majority opinion in *Tungus*.

2. The decisions of the courts prior to *The Harrisburg*, and for that matter up to the decision in Tungus, universally applied maritime law to maritime disputes and refused to apply state law which conflicted with the general maritime law.

3. The Court in *The Harisburg* specifically declineed to rule upon the question whether a valid excuse, as applicable to the law of laches, would toll the operaion of the state statute of limitations.

Petitioner contends that even if state statutes of limitations are to be applied when the maritime law uses a state wrongful death statute as a remedy that the application of the statute of limitation of a state is far different from allowing the states to formulate substantive tort law governing

maritime torts when that state substantive law is in violent and direct conflict with the maritime law governing such maritime torts.

In *Just v. Chambers*, (1941) 312 U.S. 383, 61 S. Ct. 687, 85 L. Ed. 903, at page 388 this Court said:

> "With respect to maritime torts we have held that the state may modify or supplement the maritime law by creating liability which a court of admiralty will recognize and enforce when the state action is not hostile to the characteristic features of the maritime law or inconsistent with federal legislation."

In the instant *Moragne case*, the common law of Floride is hostile to the characteristic features of maritime law in that it fails to recognize the established warranty of seaworthiness rooted in admiralty law and it holds contributory negligence to be a complete bar to recovery. *Bilbrey v. Weed*, (Fla. 1968) 215 So. 2d 479, cert. denied 394 U.S. 1018, 89 S. Ct. 2097, 23 L. Ed. 2d 43, reh. den. June 16, 1969.

V.

THE HARRISBURG WAS WRONGLY DECIDED

The decision of the Supreme Court in *The Harrisburg*, *supra*, was wrong for two reasons. First, the court engrafted into the maritime law of the United States a common law doctrine which has been thoroughly and generally discredited, that is, that there was no right of action for wrongful death.

Second, in looking to the common law, the court abandoned traditional principles of maritime law which would apply principles of equity and justice in tort law and would

look generally to the civil-code nations of Europe in the determination of maritime law.

VI.

THE COMMON LAW RULE OF ACTIO PERSONALIS MORITUR CUM PERSONA IS THOROUGHLY DISCREDITED

Dean William L. Prosser in the Law of Torts, 3rd Edition, page 920, Sections 120 and 121, discusses the origin of this rule.

> The origin of the rule that personal tort actions die with the person of the plaintiff or the defendant is rather obscure[2]—the more so as contract actions which were equally "personal" were held to survive the death of either.[3] The best conjecture on the subject is that it was a result of the development of the tort remedy as an adjunct and incident to criminal punishment in the old appeal of felony and the action of trespass which succeeded it. Since the defendant could not be punished when he was dead, it was natural to regard his demise as terminating the criminal action, and tort liability with it. If it was the plaintiff who died,the early cases usually were those of homicide, for which the crown executed the defendant and confiscated all his property, so that nothing was left for tort compensation; and if not homicide, it was still to be expected that lesser crimes should be redressed by the crown rather than the successors of the deceased.
>
> * * *

p. 923

"When the defendant's tort was the responsible cause of the plaintiff's death, the same rather uncertain historical reasons which barred the survival of previous torts arose to prevent any new cause of action in his representative or his estate based on the death itself. If it were conceded that killing the plaintiff was a tort toward him, he was none the less dead, and the tort died with him.[36] It is not so clear, however, that there was ever any adequate reason for denying an action to a third party, still alive, who had lost the services of the plaintiff by reason of his death; and it is possible that such an action might at one time have been maintained.[37] But in 1808 Lord Ellenborough, whose forte was never common sense, held without citing any authority that a husband had no action for loss of his wife's services through her death, and declared in broad terms that "in a civil court the death of a human being could not be complained of as an injury." [38] The decision was accepted and folowed, not without dissent, in England,[39] and notwithstanding a good start to the contrary,[40] in the United States.[41]

The result was that is was more profitable for the defendant to kill the plaintiff than to scratch him,[42] and that the most grievous of all injuries left the bereaved family of the victim, who frequently were destitute, without a remedy."

See Judge Sprague's comment in *Cutting v. Seabury*, (District Court, D., Mass. 1860) 1 Spr. 522, 23 L. Rep. 533, 6 Fed. Cases 1083, Case No. 3521.

Not only had the English Parliament some forty years before *The Harrisburg* passed what is known as Lord Campbell's Act, but each of the states had adopted some combination of survival and wrongful death remedial statutes to overcome the harsh rule of the common law.

That the common law rule of no action for wrongful death was and is basically wrong is not now disputed by any recognized authority.

VII.

MARITIME LAW EVOLVED PRINCIPALLY FROM THE CIVIL LAW

Benedict on Admiralty, 6th Edition, Volume 1 Says:

> "The maritime law is not a branch or outgrowth of the comon law but takes its character from the civil law."
>
> * * *
>
> "Jurisdiction is the power to adjudicate a case upon the merits and dispose of it as justice may require."

See further the discussion of sources of the jurisdiction beginning at page 6.

Benedict further says in the 6th Edition, Volume 4, page 358:

> "The admiralty law is indebted for many of its characteristics to the circumstances of the countries in which it was first administered. The countries that earliest reduced the law of the sea to a system, and adopted codes of maritime regulations,

having been countries in which the Roman or civil law prevailed, the principles of that great system of jurisprodunce were incorporated with, and gave character to, the maritime law; and so much were pure reason, abstract right, and practical justice mingled in that system, and so important was it that the general maritime law should be uniform and universal, that, in England, where the common law was the law of the land, the civil law was held to be the law of the admiralty, and the course of procedings in admiralty closely resembled the civil law practice."

There follows, beginning at page 359, a discussion of the development of maritime jurisdiction and at page 375 a discussion of the strife in England between the common law courts and the admiralty in the sixteenth and seventeenth centuries. The earlier cases decided in the United States by distinguished justices held to the principle that American maritime law derived essentially from the civil law and maritime principles would be applied based upon *pure reason, abstract right and practical justice.*

In *De Lovio v. Boit* (Cir. Ct. Mass. 1815) 2 Gall. 398, 7 Fed. Cases 418, Case No. 3776, Justice Story reviewed the history of the development of maritime law in a very learned opinion. After a thorough discussion of the course of the development of the maritime law in the United States, and with particular reference to the struggle between Lord Coke and the admiralty judges in England, Justice Story said:

p. 443

"At all events, there is no solid reason for construing the terms of the constitution in a narrow and limited sense, or for ingrafting upon them the re-

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strictions of English statutes, or decisions at common law founded on those statutes, which were sometimes dictated by jealousy, and sometimes by misapprehension, which are often contradictory, and rarely supported by any consistent principle. The advantages resulting to the commerce and navigation of the United States, from a uniformity of rules and decisions in all maritime questions, authorize us to believe that national policy, as well as juridical logic, require the clause of the constitution to be so construed, as to embrace all maritime contracts, torts and injuries, or, in other words, to embrace all those causes, which originally and inherently belonged to the admiralty, before any statutable restriction."

In the *Sea Gull*, (Cir. Ct. Md. 1865) 21 Fed. Cases, page 909, Case No. 12578, Justice Chase in an admiralty action for wrongful death said:

"There are cases, indeed, in which it has been held that in a suit at law, no redress can be had by the surviving representative for injuries occasioned by the death of one through the wrong of another; but these are all common-law cases, and the common law has its peculiar rules in relation to this subject, traceable to the fendal system and its forfeitures. * * *

"These latter authorities were approved of by Judge Sprague, in the case of Cutting v. Seabury. He observes that "the weight of authority in common-law courts seems to be against the action, but natural equity and the general principles of law are in favor of it." He adds: "It is not controverted

> that if a father be willfully and wronfully deprived of the services, society, and control of his minor son, he may maintain an action against the wrong-doer if the son survive. Why, then, if the same wrong be done and aggravated by the death of the child, should his right of action be lost?" It is difficult to answer this question, and certainly it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not required to withhold it by established and inflexible rules."

For an excellent discussion of the development of the civil law in Louisiana, derived from the Code Napoleon, see the opinion of Chief Judge John R. Brown in *Grigsby v. Coastal Marine Service of Texas,* (5th Cir. 1969) 412 F. 2d 1011, beginning at page 1023. Judge Brown points out in Note 16 on page 1024 that Article 1382 of the French Civil Code, which predated The Harrisburg by some 80 years or more, provides "Every act whatever of human agency which causes damages to another, obliges the person by whose fault that damage has occurred to repair it." Also see 6 Tulane Law Review, 1931-32, page 212, and The American Journal of Comparative Law, Volume 12, page 182 et seq., and 1 C. J. 1248 et seq. (A discussion of the origin and growth of American maritime law).

It is, therefore, apparent that the Supreme Court in *The Harrisburg* departed from a very substantial and distinguished jurisprudence in the United States which refused to engraft into maritime law restrictive doctrines of the common law of England. Worse, the court in *The Harrisburg* engrafted into maritime law a doctrine of the common law of obscure heritage, apparently based upon the single decision of Lord Ellenborough, a nisi prius judge, in *Baker v.*

Bolton, (1808) 1 Camp. 493, 170 Eng. Rep. 1033, "whose forte was not common sense" according to Prosser, and one which had been widely criticized even in that day.

VIII.

THE HARRISBURG INVITED NONUNIFORMITY

The decision in *The Harrisburg*, rejecting as it did a right of action for wrongful death rooted in maritime law and requiring a reliance upon state statutes which themselves abrogated the common law rule, in effect, invited the morass of conflicting nonuniform law which has resulted, including the majority opinion in *M/V Tungus v. Skovgaard*, supra, and culminating in *Moragne v. States Marine Lines, Inc.*, *Emerson v. Holloway Concrete Products*, (5th Cir. 1960) 282 F. 2d 271, cert. den. 364 U.S. 941, 815 S. Ct. 459, 5 L. Ed. 2d 372; *Koninklyke Nederlandsche Stoomboot Maalschappy*, N. V. *v. Strachan Shipping Co.*, (5th Cir. 1962) 301 F. 2d 741, rearq. den. 304 F. 2d 545, cert. den. 371 U. S. 921, 83 S. Ct. 288, 9 L. Ed. 2d 230; *Igneri v. Cie de Transports Oceaniques*, (2nd Cir. 1963) 323 F. 2d 257, cert. den. 376 U.S. 949, 84 S. Ct. 965, 11 L. Ed. 2d 969; *Allen v. U. S.*, (9th Cir. 1964) 338 F. 2d 160, cert. den. 380 U.S. 961, 85 S. Ct. 1104, 14 L. Ed. 2d 152; *United New York Sandy Hook Pilots Association v. Rodermond Industries, Inc.*, (3rd Cir. 1968) 394 F. 2d 65; *Petition of Alva Steamship Co.*, (2nd Cir. 1969) 405 F. 2d 962; *Grigsby v. Coastal Marine Service*, (DC WD La. 1964) 235 F. Supp. 97, (5th Cir. 1969) 412 F. 2d 1011; *McLaughlin v. The Dredge Gloucester*, (DC NJ 1964) 230 F. Supp. 623; *Safir v. Compagnie Generale Transatlantique*, (DC ND NY 1965) 241 F. Supp. 501; *McManus v. Lykes Brothers Steamship Co.*, (DC ED La. 1967) 275 F. Supp. 361; *Hornsby v. Fishmeal Co.*, (DC WD La. 1968) 285 F. Supp. 990; *McMilin v. U. S.*, (DC

Del. 1968) 290 F. Supp. 351; *Anapol v. Reading Company*, (DC ED Pa. 1968) 294 F. Supp. 429; *Simpson v. Knutsen*, (DC ND Cal. 1969) 296 F. Supp. 1308.

IX.

ADMIRALTY WILL CREATE A REMEDY WHEN NECESSARY

One of the remarkable and admirable characteristics of maritime law is the tradition that, like equity, admiralty will seek to do justice and is not necessarily bound by strict adherence to any traditional rule. The Constitution specifically says, "The judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction." Pursuant to this authority, the courts have fashioned the rule of impleader, entirely a court-made rule. The courts have also promulgated and developed the right of seamen and other martime workers to a warranty from the shipowner of a seaworthy vessel. *The Osceola*, (1903) 189 U.S. 158, 23 S. Ct. 483, 47 L. Ed. 760; *Mahnich v. Southern S. S. Co.*, (1944) 321 U.S. 96, 64 S. Ct. 455, 88 L. Ed. 561. The courts also developed the doctrine of comparative negligence and refused to follow the common law rule of contributory negligence long before the passage of the Jones Act. *The Max Morris*, (1885) 24 F. 860, aff'd. 28 F. 881, 137 U.S. 1, 11 S. Ct. 29, 34 L. Ed. 586. The admiralty courts of this country derive from the constitution itself the power to formulate admiralty law apart from statutory law and the power to establish remedies in admiralty apart from statutes of either the United States or the respective states. In fact, in the earlier cases, previously cited, discussion was sometimes had concerning the power of Congress to pass statutes which might conflict with the traditional maritime law of the United States. Such statutes

have ben found unconstitutional when in conflict with the uniform application of admiralty law, as for example, the cases involving workmen's compensation laws previously cited in this brief.

X.

A MARITIME REMEDY FOR WRONGFUL DEATH

The Supreme Court should overrule *The Harrisburg* and find that there is a remedy in the maritime law for wrongful death without regard to any statutory enactments.

The Supreme Court has, on a number of notable occasions, reversed a prior decision which was clearly wrong. For example, in *Erie R. Co. v. Tompkins,* (1938) 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, the Supreme Court overruled law established in *Swift v. Tyson,* (1842) 41 U.S. 1, 16 Pet. 1, 10 L. Ed. 865, and changed a rule of law that had existed since 1842 pursuant to which a very substantial body of law had accumulated. In 1954 the Supreme Court in *Brown v. Board of Education,* (1954) 347 U.S. 483, 98 L. Ed. 873, 74 S. Ct. 686, overruled a principle of law which had existed since 1896. In each of these instances, and in others, the Supreme Court in its wisdom, reversed a rule of law of many years standing which at the time of reversal had become clearly and patently indefensible.

The rule of *The Harrisburg* is such a rule. Undoubtedly, the Supreme Court in 1886 could not foresee the results which would obtain from that decision.

It is now clear that the rule of *The Harrisburg* was not only wrong but has created such a confusion and inconsistency of decisions that it should be overruled.

The Supreme Court should declare, consistent with the natural development of the maritime law in this country, consistent with the historic development of that law, and consistent with "pure reason, abstract right and practical justice", that there is a remedy for wrongful death in maritime law and that "every act whatever of human agency which causes damages to another, obliges the person by whose fault that damage has occurred to repair it.'

XI.

PRACTICAL CONSIDERATIONS

Petitioner further contends that if the Court overrules *The Harrisburg*, then the Court should lay down some general guide lines as to future practice in matters concerning survival and wrongful death. Petitioner contends that any person damaged by the act of another should be entitled to bring an action to recover for those damages. Also, there is authority in the civil law, as well as in the Death on the High Seas Act, 46 U.S.C. 761, and the Jones Act, 46 U.S.C. 688, for such actions to be brought by a personal representative. As a guide line for the application of laches there is authority for the application of the three year limitation period prescribed by the Jones Act. *Flowers v. Savannah Machine & Foundry Co.*, (5th Cir. 1962) 310 F. 2d 135.

The peculiar result required to be reached in *Gillespie v. U. S. Steel Corp.*, (1964) 379 U.S. 148, 85 S. Ct. 308, 13 L. Ed. 2d 199, following *Lindgren v. United States*, (1930) 281 U.S. 38, 50 S. Ct. 207, 74 L. Ed. 686, where the heirs of a dead seaman are deprived of the warranty of seaworthiness (fashioned to protect live seamen) in territorial waters, would be rendered naught.

H.

CONCLUSION

Petitioner concludes that the Supreme Court should recede from the reasoning of the majority of the court expressed in *M/V Tungus v. Skovgaard, supra,* and should reverse the United States Court of Appeals for the Fifth Circuit in this case and hold that established principles of maritime tort law govern all maritime tort cases whether the result is injury or death. The court should further hold that the State of Florida, or any state, may not substitute the state law or the common law for established principles of maritime law where the two are in conflict.

Although petitioner does not believe that a decision in this case requires the Supreme Court to overrule *The Harrisburg,* the Supreme Court requested petitioner to brief this question. Therefore, petitioner further concludes that the decision in *The Harrisburg* was wrong, has resulted in a confusing morass of conflicting decisions in attempting to apply state law for survival and wrongful death within the traditional confines of the maritime law and should, therefore, be overruled and that the Court should hold in accordance with the traditional principles of equity and justice of the maritime law that a remedy for wrongful death exists in the maritime law apart from any statutory enactments.

Respectfuly submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true copies of the foregoing Brief of Appellant have been furnished by hand delivery this 31st day of December, 1969 to each of the following: William A. Gillen, Esquire, of Fowler, White, Collins, Gillen, Humkey & Trenam, 220 Madison Avenue, Tampa, Florida, Counsel for the Respondent, States Marine Lines, Inc.; George W. Ericksen, Esquire, of Macfarlane, Ferguson, Allison & Kelly, Counsel for the Respondent, Gulf Florida Terminal Company; and The Honorable Erwin N. Griswold, Solicitor General, U. S. Department of Justice, Constitution Avenue and 10th Street, N. W., Washington, D. C.; and one copy by mail this 30th day of December, 1969, to the Clerk of the United States Court of Appeals for the Fifth Circuit, in compliance with the Supreme Court Rules.

By.....

Attorney